



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

VALLEY REGIONAL OFFICE

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David K. Paylor
Director

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**VIRGINIA WASTE MANAGEMENT BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
FREDERICK COUNTY
FOR
FREDERICK COUNTY LANDFILL
Solid Waste Permit No. SWP529**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code § 10.1-1455, between the Virginia Waste Management Board and the Frederick County regarding the Frederick County Landfill, for the purpose of resolving violations of the Virginia Waste Management Act and the applicable permit and regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the Virginia Waste Management Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1401.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
5. "Facility" or "Landfill" means Frederick County Landfill located at 280 Landfill Road in Winchester, Virginia, which is owned and operated by the Frederick County.
6. "Frederick County" means Frederick County, a political subdivision of the Commonwealth of Virginia. Frederick County is a "person" within the meaning of Va. Code § 10.1-1400.
7. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.
8. "Order" means this document, also known as a "Consent Order" or "Order by Consent."
9. "Permit" means Solid Waste Permit (SWP) No. 529, which was issued under the Virginia Waste Management Act and the Regulations to Frederick County on August 5, 1989.
10. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water.
11. "Regulations" or "VSWMR" means the Virginia Solid Waste Management Regulations, 9 VAC 20-81-10 *et seq.*
12. "Va. Code" means the Code of Virginia (1950), as amended.
13. "VAC" means the Virginia Administrative Code.
14. "Virginia Waste Management Act" means Chapter 14 (§ 10.1-1400 *et seq.*) of Title 10.1 of the Va. Code. Article 2 (Va. Code §§ 10.1-1408.1 through -1413.1) of the Virginia Waste Management Act addresses Solid Waste Management.
15. "VPDES" means Virginia Pollutant Discharge Elimination System.
16. "VRO" means the Valley Regional Office of DEQ, located in Harrisonburg, Virginia.
17. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 10.1-1455.

SECTION C: Findings of Fact and Conclusions of Law

1. On August 5, 1989, Frederick County was granted a permit to operate a Sanitary Landfill by the Commissioner of the Virginia Department of Health, predecessor-in-interest to the Director of DEQ. The Permit allows Frederick County to dispose of sanitary waste, tire storage and shredding, poultry waste, and other various solid waste.
2. The Facility has been operated as a Sanitary Landfill since the permit was issued. Operations at the Facility are subject to the Virginia Waste Management Act, the Regulations, and the Permit.
3. On September 29, 2016, Frederick County notified DEQ of a leachate discharge from the Facility, where an estimated 81,000 gallons of leachate discharged into Opequon Creek.
4. On October 4, 2016, in response to the notification of discharge, DEQ staff conducted a compliance inspection at the Facility. DEQ staff observed leachate discharging onto the ground from a manhole at the Facility.
5. 9 VAC 20-81-140(A)(6)(a) states that: "Landfills shall not allow leachate from the landfill to drain or discharge into surface waters except when treated onsite and discharged into surface water as authorized under a VPDES Permit."
6. On October 18, 2016, DEQ issued NOV No. WS-16-10-VRO-002 to Frederick for violations of Solid Waste Regulations.
7. On November 8, 2016, Department staff met with representatives of Frederick County to discuss the violations, including Frederick County's written response to the NOV. Frederick County representatives provided a timeline of events just prior to and actions after the discharge. The discharge was a result of a line blockage, created while Frederick County was performing Facility maintenance, and corresponding overflow at a manhole. As part of their return to compliance, Frederick County implemented an update to their operations manual at the Facility and included regular and timely clean out procedures. Additionally, in conjunction with the Frederick County Sanitation Authority, Frederick County flushed lines throughout the Facility, and inspected the lines with video equipment.
8. Based on the results of the September 26, 2016 notification, the October 4, 2016 inspection, the November 8, 2016 meeting, and the documentation submitted on November 8, 2016 the Board concludes that Frederick County has violated 9 VAC 21-81-140(A)(6)(a) as described in paragraphs C(1) through C(4), above.
9. Frederick County has submitted documentation that verifies that the violations described in paragraphs C(3) through C(4), above, have been corrected. Frederick County is updating their facility operations manual to include regular and timely clean out procedures. Additionally, Frederick County, in conjunction with the Frederick County

Sanitation Authority, completed a comprehensive line flush and conducted a video inspection of the line system.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code § 10.1-1455, the Board orders Frederick County, and Frederick County agrees to:

1. Pay a civil charge of \$11,250 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Frederick County shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection of moneys due under this Order to the Department of Law, Frederick County shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Frederick County for good cause shown by Frederick County, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. WS-16-10-VRO-002, dated October 18, 2016. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Frederick County admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.

4. Frederick County consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Frederick County declares it has received fair and due process under the Administrative Process Act and the Virginia Waste Management Act and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Frederick County to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Frederick County shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Frederick County shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Frederick County shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.

10. This Order shall become effective upon execution by both the Director or his designee and Frederick County. Nevertheless, Frederick County agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
- a. The Director or his designee terminates the Order after Frederick County has completed all of the requirements of the Order;
 - b. Frederick County petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Frederick County.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Frederick County from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Frederick County and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Frederick County certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Frederick County to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Frederick County.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Frederick County voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 26th day of June, 2018.



Amy T. Owens, Regional Director

Department of Environmental Quality

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Frederick County voluntarily agrees to the issuance of this Order.

Date: 5/2/18 By: [Signature] County Administrator
(Person) (Title)

Commonwealth of Virginia

(City) County of Winchester

The foregoing document was signed and acknowledged before me this 2nd day of May, 2018, by Kris C. Tierney who is County Administrator of Frederick County.

[Signature]
Notary Public

7611423
Registration No.

My commission expires: 11-30-2020

Notary seal:

